

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1291**

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**Introduced by Assembly Member Lowenthal**  
**(Coauthors: Assembly Members Chau and Rendon)**

February 22, 2013

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An act to repeal and add Section 1798.83 to the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1291, as amended, Lowenthal. Privacy: *Right to Know Act of 2013*: disclosure of a customer's personal information.

(1) Existing law requires a business to ensure the privacy of a customer's personal information, as defined, contained in records by destroying, or arranging for the destruction of, the records, as specified. Any customer injured by a business' violation of these provisions is entitled to recover damages, obtain injunctive relief, or seek other remedies.

This bill would *create the Right to Know Act of 2013*, would repeal and reorganize certain provisions of existing law, *and would provide legislative findings in support thereof*.

(2) Existing law also requires a business that collects customer information for marketing purposes and that discloses a customer's personal information to a 3rd party for direct marketing purposes, to provide the customer with whom it had a business relationship, as defined, within 30 days after the customer's request, as specified, in writing or by e-mail, the names and addresses of the recipients of that information and specified details regarding the information disclosed, except as specified. Existing law requires a business subject to these

provisions to provide an address, electronic address, or toll-free telephone or facsimile number that a customer may use to deliver requests for copies of his or her personal information.

This bill would instead require any business that ~~has~~ *retains* a customer's personal information, as defined, *or discloses that information to a 3rd party*, to provide at no charge, within 30 days of the customer's specified request, a copy of that information to the customer as well as the names and contact information for all 3rd parties with which the business has shared the information during the previous 12 months, regardless of any business relationship with the customer. This bill would require that a business subject to these provisions choose one of several specified options to provide the customer with a designated address for use in making a request for copies of information under these provisions.

(3) Existing law also requires a business that is required to comply with these provisions to provide information to customers regarding its privacy policy and to provide a designated means of preventing disclosure of personal information.

This bill would require a business that is required to comply with these provisions to provide specified notice to the customer of its privacy policies.

(4) Existing law provides that a customer who sustains injury as a result of a violation of these provisions is entitled to specified remedies, including civil penalties.

This bill would also provide that a violation of these provisions is deemed to constitute an injury to the customer for purposes of seeking remedies available under law.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. This act shall be known and may be cited as the*  
2     *Right to Know Act of 2013.*

3     *SEC. 2. The Legislature hereby finds and declares all of the*  
4     *following:*

5     *(a) The right to privacy is a personal and fundamental right*  
6     *protected by Section 1 of Article I of the California Constitution*  
7     *and by the United States Constitution. All individuals have a right*  
8     *of privacy in information pertaining to them.*

1     ***(b) This state has previously recognized the importance of***  
2     ***providing Californians with transparency about how their personal***  
3     ***information has been shared by businesses by enacting Section***  
4     ***1798.83 of the Civil Code into law in 2003 and finding and***  
5     ***declaring the following:***

6     ***“For free market forces to have a role in shaping the privacy***  
7     ***practices of California businesses and for ‘opt-in’ and ‘opt-out’***  
8     ***remedies to be effective, Californians must be more than vaguely***  
9     ***informed that a business might share personal information with***  
10    ***third parties. Consumers must, for these reasons and pursuant to***  
11    ***Section 1 of Article 1 of the California Constitution, be better***  
12    ***informed about what kinds of personal information are purchased***  
13    ***by businesses for direct marketing purposes. With these specifics,***  
14    ***consumers can knowledgeably choose to opt-in or opt-out or***  
15    ***choose among businesses that disclose information to third parties***  
16    ***for direct marketing purposes on the basis of how protective the***  
17    ***business is of consumers’ privacy.”***

18    ***(c) Since Section 1798.83 of the Civil Code was first enacted***  
19    ***in 2003, technology has advanced exponentially and business***  
20    ***practices have changed dramatically.***

21    ***(d) Businesses are now collecting types of personal information***  
22    ***not included in the original law and sharing and selling it in ways***  
23    ***not contemplated or properly covered by the current law.***

24    ***(e) Some Web sites are installing up to 100 tracking tools when***  
25    ***consumers visit Web pages and sending very personal information***  
26    ***such as age, gender, race, income, health concerns, and recent***  
27    ***purchases to third-party advertising and marketing companies.***

28    ***(f) Third-party data broker companies are buying, selling, and***  
29    ***trading personal information obtained from mobile phones,***  
30    ***financial institutions, social media sites, and other online and***  
31    ***brick and mortar companies.***

32    ***(g) Some mobile applications are sharing personal information,***  
33    ***such as location information, unique phone identification numbers,***  
34    ***and age, gender, and other personal details with third-party***  
35    ***companies.***

36    ***(h) Californians need to know the ways that their personal***  
37    ***information is being collected by companies and then shared or***  
38    ***sold to third parties in order to properly protect their privacy,***  
39    ***personal safety, and financial security.***

1     ~~SECTION 1.~~

2     ~~SEC. 3.~~ Section 1798.83 of the Civil Code is repealed.

3     ~~SEC. 2.~~

4     ~~SEC. 4.~~ Section 1798.83 is added to the Civil Code, to read:

5     1798.83. (a) (1) A business that ~~has~~ *retains* a customer's  
6     personal information shall make available to the customer free of  
7     charge access to, or copies of, all of the customer's personal  
8     information ~~held retained~~ by the business.

9     (2) A business that ~~has~~ *discloses* a customer's personal  
10    information ~~and discloses that personal information~~ to a third party  
11    shall make the following information available to the customer  
12    free of charge:

13    (A) All *categories of the customer's* personal information that  
14    ~~was were~~ disclosed, including the categories set forth in paragraph  
15    (1) of subdivision ~~(e)~~ (d).

16    (B) The names and contact information of all of the third parties  
17    that received *the customer's* personal information from the  
18    business, including the third party's designated request address or  
19    addresses if available.

20    (b) A business required to comply with subdivision (a) shall  
21    make the required information available by one or more of the  
22    following means:

23    (1) By providing a designated request address and, upon receipt  
24    of a request under this section to the designated request address,  
25    providing the customer within 30 days *with* the required  
26    information for all disclosures occurring in the prior 12 months,  
27    provided that:

28    (A) If the business has an online privacy policy, that policy  
29    includes a description of a customer's rights pursuant to this section  
30    accompanied by one or more designated request addresses. A  
31    business with multiple online privacy policies must include ~~a~~  
32    ~~description~~ *this information* in the policy of each product or service  
33    that collects personal information that may be disclosed to a third  
34    party.

35    (B) The business ensures that all persons responsible for  
36    handling customer inquiries about the business' privacy practices  
37    or the business' compliance with this section are informed of all  
38    designated request addresses.

39    (C) The business provides information pertaining to the specific  
40    customer if that information is reasonably available to the business,

1 and provides information in standardized format if information  
2 pertaining to the specific customer is not reasonably available.

3 (2) For information required to be provided by paragraph (2)  
4 of subdivision (a), by providing the customer with notice including  
5 the required information prior to or immediately following a  
6 disclosure.

7 (3) By providing the customer the disclosure required by Section  
8 6803 of Title 15 of the United States Code, but only if the  
9 disclosure also complies with this section.

10 (c) (1) A business is not obligated to provide more than one  
11 notice under paragraph (2) of subdivision (b) to the same customer  
12 in a 12-month period about the disclosure of the same personal  
13 information to the same third party and is not obligated under  
14 paragraph (1) of subdivision (b) to respond to a request by the  
15 same customer more than once within a given 12-month period.

16 (2) *A business is not obligated to provide information to the*  
17 *customer pursuant to subdivision (a) if the business cannot*  
18 *reasonably verify that the individual making the request is the*  
19 *customer.*

20 ~~(d) A violation of this section by a business subject to these~~  
21 ~~provisions is deemed to constitute an injury to a customer.~~

22 ~~(e)~~

23 (d) For purposes of this section, the following terms have the  
24 following meanings:

25 (1) “Categories of personal information” includes, but is not  
26 limited to, the following:

27 (A) Identity information including, but not limited to, real name,  
28 alias, nickname, and user name.

29 (B) Address information, including, but not limited to, postal  
30 address or e-mail.

31 (C) Telephone number.

32 (D) Account name.

33 (E) Social security number or other government-issued  
34 identification number, including, but not limited to, social security  
35 number, driver’s license number, identification card number, and  
36 passport number.

37 (F) Birthdate or age.

38 (G) Physical characteristic information, including, but not  
39 limited to, height and weight.

1 (H) Sexual information, including, but not limited to, sexual  
2 orientation, sex, gender status, gender identity, and gender  
3 expression.

4 (I) Race or ethnicity.

5 (J) Religious affiliation or activity.

6 (K) Political affiliation or activity.

7 (L) Professional or employment-related information.

8 (M) Educational information.

9 (N) Medical information, including, but not limited to, medical  
10 conditions or drugs, therapies, mental health, or medical products  
11 or equipment used.

12 (O) Financial information, including, but not limited to, credit,  
13 debit, or account numbers, account balances, payment history, or  
14 information related to assets, liabilities, or general creditworthiness.

15 (P) Commercial information, including, but not limited to,  
16 records of property, products or services provided, obtained, or  
17 considered, or other purchasing or consuming histories or  
18 tendencies.

19 (Q) Location information.

20 (R) Internet or mobile activity information, including, but not  
21 limited to, Internet Protocol addresses or information concerning  
22 the access or use of any Internet or mobile-based site or service.

23 (S) Content, including text, photographs, audio or video  
24 recordings, or other material generated by or provided by the  
25 customer.

26 (T) Any of the above categories of information as they pertain  
27 to the children of the customer.

28 (2) (A) “Customer” means an individual who is a resident of  
29 California who provides personal information to a business, with  
30 or without an exchange of consideration, in the course of  
31 purchasing, viewing, accessing, renting, leasing, or otherwise using  
32 real or personal property, or any interest therein, or obtaining a  
33 product or service from the business including advertising or any  
34 other content.

35 (B) An individual is also the customer of a business if that  
36 business obtained the personal information of that individual from  
37 any other business.

38 (3) “Designated request address” means a mailing address,  
39 e-mail address, Web page, toll-free telephone number, or other  
40 applicable contact information, whereby customers may request

1 or obtain the information required to be provided under subdivision  
2 (a).

3 (4) (A) “Disclose” means to disclose, release, share, transfer,  
4 disseminate, make available, or otherwise communicate orally, in  
5 writing, or by electronic or any other means to any third party as  
6 defined in this section.

7 (B) “Disclose” does not include:

8 (i) Disclosure of personal information by a business to a third  
9 party pursuant to a written contract authorizing the third party to  
10 utilize the personal information to perform services on behalf of  
11 the business, including maintaining or servicing accounts,  
12 providing customer service, processing or fulfilling orders and  
13 transactions, verifying customer information, processing payments,  
14 providing financing, or similar services, but only if (I) the contract  
15 prohibits the third party from using the personal information for  
16 any reason other than performing the specified service(s) on behalf  
17 of the business and from disclosing any such personal information  
18 to additional third parties and (II) the business effectively enforces  
19 these prohibitions.

20 (ii) Disclosure of personal information by a business to a third  
21 party based on a good-faith belief that disclosure is required to  
22 comply with applicable law, regulation, legal process, or court  
23 order.

24 (iii) Disclosure of personal information by a business to a third  
25 party that is reasonably necessary to address fraud, security, or  
26 technical issues; to protect the disclosing business’s rights or  
27 property; or to protect customers or the public from illegal activities  
28 as required or permitted by law.

29 (iv) Disclosure of personal information by a business to a third  
30 party that is otherwise lawfully available to the general public,  
31 provided that the business did not direct the third party to the  
32 personal information.

33 (5) “Personal information” means:

34 (A) Any information that identifies or references a particular  
35 individual or electronic device, including, but not limited to, a real  
36 name, alias, postal address, telephone number, electronic mail  
37 address, Internet Protocol address, account name, social security  
38 number, driver’s license number, passport number, or any other  
39 identifier intended or able to be uniquely associated with a  
40 particular individual or device.

(B) Any information that relates to or describes an individual, including, but not limited to, any information specifically listed in subdivision (e) of Section 1798.80 of the Civil Code, and including inferences or conclusions drawn from other information, if such information is disclosed in connection with any identifying or referencing information as defined in subparagraph (A) above.

(6) (A) *“Retains” means to store or otherwise hold information, whether the information is collected or obtained directly from the subject of the information or from any third party.*

(B) *“Retains” does not include information that is stored or otherwise held solely for one or more of the following purposes, so long as the information is deleted as soon as it is no longer needed for those purposes:*

(i) *To perform a service or complete a transaction initiated by or on behalf of the customer, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, or similar services.*

(ii) *To address fraud, security, or technical issues; to protect the disclosing business’ rights or property; or to protect customers or the public from illegal activities as required or permitted by law.*

(iii) *To comply with applicable law or regulation or with a court order or other legal process where the business has a good-faith belief that the law, regulation, court order, or legal process requires the information to be stored or held.*

~~(6)~~

(7) *“Third party” or “third parties” means one or more of the following:*

(A) *A business that is a separate legal entity from the business that has disclosed personal information.*

(B) *A business that does not share common ownership or common corporate control with the business that has disclosed personal information.*

(C) *A business that does not share a brand name or common branding with the business that has disclosed personal information such that the affiliate relationship is clear to the customer.*

~~(f)~~

(e) *The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall*

1 not affect other provisions or applications that can be given effect  
2 without the invalid provision or application.  
3 *(f) A violation of this section constitutes an injury to a customer.*  
4 *A civil action to recover penalties pursuant to Section 1798.84*  
5 *may be brought by a customer, the Attorney General, a district*  
6 *attorney, a city attorney, or a city prosecutor, in a court of*  
7 *competent jurisdiction.*

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